

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

AJD, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-093895 02-CA-097827
LEWIS FOODS OF 42ND STREET, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-093893 02-CA-098662
18884 FOOD CORP., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-094224 02-CA-098676
14 EAST 47TH STREET, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-094679 02-CA-098604
JOHN C FOOD CORP., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-093927 02-CA-098659
840 ATLANTIC AVENUE, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Case: 02-CA-097305
1531 FULTON STREET, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-103771 02-CA-112282
McCONNER STREET HOLDING, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Case: 02-CA-098809
McCONNER STREET HOLDING, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Case: 02-CA-103384
MIC-EASTCHESTER, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Case: 02-CA-103726
BRUCE C. LIMITED PARTNERSHIP, A	Case: 02-CA-106094

**McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT EMPLOYERS**

and

**FAST FOOD WORKERS COMMITTEE AND SERVICE
EMPLOYEES INTERNATIONAL UNION, CTW, CLC
JO-DAN MADALISSE LTD, LLC d/b/a MCDONALD'S, A
FRANCHISEE OF MCDONALD'S USA, LLC and
MCDONALD'S USA, LLC Joint Employers**

**Cases 04-CA-125567
04-CA-129783
04-CA-133621**

and

**PENNSYLVANIA WORKERS ORGANIZING COMMITTEE,
A PROJECT OF THE FAST FOOD WORKERS
COMMITTEE**

and

**KARAVITES RESTAURANTS 11102, LLC, A McDONALD'S
FRANCHISEE, AND McDONALD'S, USA, LLC, JOINT
EMPLOYERS**

Case 13-CA-106490

**KARAVITES RESTAURANTS 26, INC., A
McDONALD'S FRANCHISEE, AND McDONALD'S, USA,
LLC, JOINT EMPLOYERS**

Case 13-CA-106491

**RMC LOOP ENTERPRISES, LLC, A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC, JOINT
EMPLOYERS**

Case 13-CA-106493

**WRIGHT MANAGEMENT, INC., A McDONALD'S
FRANCHISEE, AND McDONALD'S, USA, LLC, JOINT
EMPLOYERS**

**Cases 13-CA-107668
13-CA-113837**

**V. OVIEDO, INC., A McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT EMPLOYERS**

**Cases 13-CA-115647
13-CA-119015
13-CA-123916
13-CA-124813
13-CA-131440**

McDONALD'S RESTAURANTS OF ILLINOIS, INC.

**Cases 13-CA-117083
13-CA-118691
13-CA-121759**

**LOFTON & LOFTON MANAGEMENT V, INC., A
McDONALD'S FRANCHISEE, AND McDONALD'S USA,**

Case 13-CA-118690

LLC, JOINT EMPLOYERS

K. MARK ENTERPRISES, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Cases 13-CA-123699
13-CA-129771

NORNAT, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Case 13-CA-124213

KARAVITES RESTAURANT 5895, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S, USA, LLC, JOINT EMPLOYERS Case 13-CA-124812

TAYLOR & MALONE MANAGEMENT, A McDONALD'S FRANCHISEE, AND McDONALD'S, USA, LLC, JOINT EMPLOYERS Case 13-CA-129709

RMC ENTERPRISES, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Case 13-CA-131141

KARAVITES RESTAURANT 6676, LLC, McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Case 13-CA-131143

TOPAZ MANAGEMENT, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Case 13-CA-131145

and

WORKERS ORGANIZING COMMITTEE OF CHICAGO

and

MAZT, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, AS JOINT EMPLOYERS Cases 20-CA-132103
20-CA-135947
20-CA-135979
20-CA-137264

and

WESTERN WORKERS ORGANIZING COMMITTEE OF CHICAGO

FAITH CORPORATION OF INDIANAPOLIS, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Cases 25-CA-114819
25-CA-114915
25-CA-130734
25-CA-130746

and

WORKERS ORGANIZING COMMITTEE OF CHICAGO

And

**D. BAILEY MANAGEMENT COMPANY, A
McDONALD'S FRANCHISEE, AND McDONALD'S
USA, LLC AS JOINT EMPLOYERS**

**Cases 31-CA-127447
31-CA-130085
31-CA-130090
31-CA-132489
31-CA-135529
31-CA-135590**

**2MANGAS INC., A McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC AS JOINT EMPLOYERS**

**Cases 31-CA-129982
31-CA-134237**

**SANDERS-CLARK & CO., INC, A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC AS JOINT
EMPLOYERS**

**Cases 31-CA-128483
31-CA-129027
31-CA-133117**

And

LOS ANGELES ORGANIZING COMMITTEE

MOTION TO SEVER

Wright Management, Inc. (hereinafter “Wright Management”)¹, files this Motion to Sever pursuant to the National Labor Relations Board (hereinafter “Board”) Rules and Regulations, Section 102.33(d) and respectfully requests the Administrative Law Judge (“ALJ”) to order severance of these proceedings such that the cases against Wright Management are consolidated with each other but are severed from those cases involving separate independent Franchisees, who are not even alleged to have any joint employment relationship with Wright Management.²

¹ The unfair labor practice charges at issue, Nos. 13-CA-107668 and 13-CA-113837, were brought against Wright Management, Inc. d/b/a Rock-N-Roll McDonalds. The McDonald’s location at 600 N. Clark St., Chicago, IL 606010 was operated by Rock and Roll, Inc., which was a subsidiary of Wright Management, Inc. Rock and Roll, Inc. no longer operates that location. For simplicity, the respondent is referred to as Wright Management throughout this motion.

² Wright Management was not properly served with the Order consolidating all outstanding charges against McDonald’s owners and operations from Regions 4, 13, 20, 25 and 31 and transferring those charges to Region 2 until long after the original consolidation order was issued. In addition to the reasons set forth below, this failure to

BACKGROUND

Wright Management was a Franchisee that independently operated a franchise of McDonald's USA, LLC ("McDonald's") at 600 North Clark Street, Chicago, Illinois 60610 through May 15, 2014. In operating the franchise, Wright Management was the only employer of the employees working at the restaurant and made all employment decisions concerning the restaurant including employee hiring and termination, employee discipline, and determination of employee schedules. The Workers Organizing Committee of Chicago ("Charging Party") filed charges alleging violations of Sections 8(a)(1) and (3) of the National Labor Relations Act. Specifically, the Charging Party alleges that Wright Management issued disciplinary write-ups against employees Rosa Delgado and Ines Villalobos in retaliation for engaging in protected concerted activities and in an effort to discourage them and other employees from engaging in such activities; that Wright Management falsely accused Delgado of threatening a manager in retaliation for engaging in protected concerted activities; that Wright Management threatened Villalobos with suspension for further engaging in protected concerted activities; that Wright Management threatened other employees with retaliation if they engaged in protected concerted activities; and that Wright Management scheduled Villalobos to work in an area where she was not physically able to work in retaliation for engaging in protected concerted activities. Wright Management denies that these charges have any merit and looks forward to the opportunity to defend against these allegations.

However, Wright Management's ability to present its case and resolve these claims has been severely prejudiced by the General Counsel's decision to consolidate 61 unfair labor

(continued...)

adhere to proper procedures underscores the complexities of consolidating and litigating these charges in parallel. It also signifies the General Counsel's lack of focus on the separate rights of each franchisee involved in this matter.

practice charges, across 5 states, involving 21 different independent operators, operating 30 different restaurants.³ Rather than simply being able to evaluate the merits of Charges 13-CA-118387 and 13-CA-107688 and develop a strategy for resolution, Wright Management has been dragged into this unmanageable morass involving parties, practices, and factual allegations that are wholly unrelated to the claims against Wright Management, or even as to the alleged joint employment relationship between Wright Management and McDonald's. The only thing that these cases have in common is the "McDonald's" brand name which, in and of itself, does not serve as a basis for consolidation. The General Counsel's decision to consolidate these cases is an extraordinary abuse of discretion given the particularized nature of each case and the high propensity for prejudice to each party's ability to effectively present evidence free of conflation with separate cases and legal issues. The ALJ should sever the consolidated charges such that all charges against Wright Management are consolidated with each other but not consolidated with charges involving separate and distinct Franchisees. There simply is no factual connection between the complaints themselves to justify consolidation and as a result, this unprecedented action undermines the purpose of the Act.

I. The Consolidation Violates Board Rule 101.10 On The Location Of Hearings

The General Counsel's consolidation violates Board Rule 101.10 which provides that "[e]xcept in extraordinary situations the hearing is ...usually conducted in the Region where the charge originated." The General Counsel offers no basis for violating this rule. There are no extraordinary circumstances present to justify hearing cases from six different Regions at various locations around the country.

³ On January 5, 2015, the General Counsel transferred cases from Regions 4, 13, 20, 25, and 31 to the Regional Director for Region 2. On January 6, 2015, the Regional Director consolidated the transferred cases for hearing with the consolidated cases in Region 2.

The General Counsel has proposed hearing Regions 2 and 4 in New York, Regions 13 and 25 in Chicago, and then travelling to Los Angeles for Regions 20 and 31. Despite this phased process, the record will remain open for the duration of the entire trial, thus forcing all parties to participate in this traveling hearing process. This is an incredible expense for the parties involved and is not justified by any prevailing extraordinary situation or interest. Indeed, each Franchisee is facing a series of fairly simple, but factually specific claims which will require individual adjudication. The joint employer issue will require an examination of McDonald's relationship with each Franchisee specific to the claims against it. The consolidation will not provide greater efficiency in hearing these matters, but on the contrary, it will dramatically increase the time and expense of resolution of each of these claims. As such commensurate with Board Rule 101.10, the ALJ should order the severance of this case as to each independent Franchisee and the cases should be heard in their respective Regions.

II. Consolidation Of These Factually Distinct Cases Is An Abuse Of Discretion By The General Counsel

Board Rule § 102.33(a) gives the General Counsel discretion to consolidate cases where “necessary in order to effectuate the purpose of the Act or to avoid unnecessary costs or delay.” This discretion, however, is not unbounded and is subject to review for an abuse of discretion. *See Service Employees Union, Local 87 (Cresleigh Management, Inc.)*, 324 NLRB 774, 774 (1997). Further, Board Rule § 102.35(a)(8) gives the ALJ the authority to “upon motion order proceedings consolidated or severed.” The ALJ should exercise her authority to sever the consolidated cases such that all cases against each independent Franchisee are consolidated with each other but are severed from those cases involving separate Franchisees.

The Board has repeatedly held that consolidation is inappropriate where, as here, the cases involve different units of employees and different factual backgrounds. *See e.g., Accent*

Maintenance Corporation, 303 NLRB 294, 299-300 (1991) (denying a motion to consolidate cases where “the events of the Complaint are also distinct and involve separate issues of law and fact.”); *Venture Packaging, Inc.*, 290 NLRB 1237, 1237 n.1 (1988) (denying a motion to consolidate cases where the charging parties and the issues in the cases differed); *c.f. Beverly California Corporation*, 326 NLRB 232, 236 (1998) (involving the “unprecedented” consolidation of 17 cases but where each charge was against one corporation and its wholly-owned subsidiaries). In *United States Postal Service*, 263 NLRB 357, 367 (1982), the Board upheld the ALJ’s denial of a motion to consolidate two cases dealing with different post office branches. The ALJ explained that there was no indication that the charging party in one case had any contact with the respondent or the officials involved in the other case. *Id.*; *see also, The Dow Chemical Company*, 250 NLRB 748, 748 n.1 (1980) (“The motion to consolidate is hereby denied inasmuch as the cases involve different units of employees and raise issues which, in view of the varying allegations of the complaint and different factual backgrounds, are best considered separately.”); *King Broadcasting Company*, 324 NLRB 332, 339 n.12 (1997) (denying a motion for consolidation where the case dealt with “development of subtle and extensive labor-management dynamics”).

Similarly here, the parties involved, the claims, and the disputed practices, all vary amongst Franchisees. The allegations against Wright Management involve the discipline of two employees, Rosa Delgado and Ines Villalobos, alleged false accusations made against Delgado, alleged threats made to Villalobos and the altering of Villalobos’ work area. The resolution of these claims will require evidence from the individual employees and the managers and supervisors involved in their discipline, who may also testify as to the allegations of threats and false accusations. Resolution will also require information regarding Villalobos’ schedule and

her physical limitations. The events in question are only alleged to have occurred at the restaurant located at 600 North Clark Street.

Indeed, each Franchisee in this consolidated complaint is addressing idiosyncratic claims. Even where the joint employer issue is concerned, determining liability for McDonald's will require individual examination of the company's relationships, involvement, and level of knowledge relevant to the claims against each Franchisee. It is difficult to imagine a more disparate set of cases and as such, the ALJ should sever cases brought against separate and distinct Franchisees.

III. Consolidation Prejudices Each Party's Ability To Mount A Defense In This Action

Consolidation of these cases violates due process in that it severely prejudices each Franchisee's ability to defend against the claims asserted. Courts considering the propriety of consolidation look at whether it "den[ies] a party his due process right to prosecute his own separate and distinct claims or defenses without having them so merged in the claims or defenses of others that irreparable injury will result." *Garber v. Randell*, 477 F.2d 711, 716-717 (2d Cir. 1973); *see also In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 373 (2d Cir. 1993) ("Although consolidation may enhance judicial efficiency, 'considerations of convenience and economy must yield to a paramount concern for a fair and impartial trial.'"). In *Malcolm v. Nat'l Gypsum Co.*, the court reversed the district court's consolidation of asbestos litigation noting the "dizzying amount of evidence" regarding each victim's work history, disease pathology, level of exposure, and location of exposure. *See Malcolm*, 995 F.2d 346, 349 (2d Cir. 1993); *see also Garber*, 477 F.2d at 716-717 (finding that consolidating the complaints of various plaintiff stockholders against numerous defendants presented issues of "serious prejudice" explaining that "to be joined with numerous unrelated claims by other purchasers against some 50-odd other

defendants in one ‘mixed bag’ type of consolidated complaint would be fundamentally unfair...”).

Here, the disparate issues involved and the sheer number of parties including 21 independent Franchisees, McDonald’s, numerous Charging Parties, and countless witnesses create a due process concern. The presentation of evidence involving 61 unfair labor practice charges and the case-by-case adjudication of McDonald’s as a joint employer, threatens to overwhelm the evidence Wright Management will present in its own defense. While Wright Management’s evidence will be specific to its disciplinary and scheduling policies and the alleged events regarding threats to Villalobos and false accusations against Delgado, there is a great potential for confusion and conflation of the factual distinctions with other Franchisees. *See e.g., Arnold v. Eastern Air Lines*, 712 F.2d 899, 906 (4th Cir. 1983) (reversing a decision to consolidate cases and holding that “considerations of convenience may not prevail where the inevitable consequence to another party is harmful and serious prejudice.”); *see also, Schneck v. IBM*, Case No. 92-4370 (GEB), 1996 U.S. Dist. LEXIS 10126, at *18 (D.N.J. June 24, 1996) (denying a motion to consolidate explaining that “[t]he critical facts and factual issues are unique to each case, and a consolidation of these individual factual issues would result in inevitable jury confusion and a trial setting highly prejudicial to IBM.”). While Wright Management believes the ALJ will work to remain objective throughout the proceedings, it cannot be denied that managing a trial of this magnitude, across the country for what will likely be years, and then issuing rulings in 61 different charges, will be an incredibly challenging task. And where consolidation is not justified by the benefits of added efficiencies, it becomes an entirely unnecessary exercise.

Further, Wright Management will be delayed in the resolution of its case by being forced to participate in wholly irrelevant proceedings. “Consolidation that would unnecessarily delay [another] case is inappropriate.” *Wai Feng Trading Co. v. Quick Fitting, Inc.*, Case No. 13-033S/13-056S, 2014 U.S. Dist. LEXIS 117251, at *13 (D.R.I. May 30, 2014); *see also Accent Maintenance Corporation*, 303 NLRB at 300 (denying a motion to consolidate explaining that where a case was ripe for decision the parties “are entitled to have their respective rights and obligations determined with reasonable dispatch.”). Resolution of the Charges against Wright Management will likely turn on the credibility determinations of a handful of key witnesses and a quick comparison to similarly situated employees. Rather than simply presenting its defenses and receiving a timely determination on those issues, resolution for Wright Management will be delayed for years while the cases against McDonald’s, McDonald’s Restaurants of Illinois, Inc. and each independent Franchisee are litigated around the country. The General Counsel proposes that the same ALJ travel to New York, Chicago, and Los Angeles to preside over these proceedings. All the while, Wright Management will be denied resolution on claims large and small, until this process concludes.

Wright Management is also prejudiced by the additional time and cost that attending these protracted proceedings will require. The General Counsel’s proposed regional phases of adjudication will still result in an enormous expenditure for Wright Management. The New York hearings alone will involve all of the consolidated cases in Region 2 and 4 which include 20 charges, 11 independent Franchisees, and adjudication of McDonald’s as a joint employer with each. Wright Management must have a presence throughout the proceedings in order to present its defense, point out any relevant distinctions in the operation of its restaurant and its relationship with McDonald’s, and participate in motion practice that may have a bearing on its

case. The cost of this process compared to the small proportion of claims at issue specifically relating to Wright Management, creates a substantial fairness issue.

The General Counsel's consolidation has also completely stymied settlement discussions. Wright Management is being forced to litigate case involving a run-of-the-mill violations because the General Counsel is insistent on trying all joint employer cases together and will not permit Wright Management to settle the case absent an admission by Wright Management that it is a joint employer with McDonald's, which it is not. McDonald's has no authority to remedy the unfair labor practices at issue even if Wright Management is found liable and the allegations do not involve any McDonald's employees or facilities that McDonald's operates. The joint employer issue is of such importance to Wright Management and the viability of the franchise business model generally, that a required concession on this point effectively takes settlement off the table. Moreover, not only is Wright Management being forced to litigate a case it would likely settle with a notice posting with little cost or delay to all parties in the absence of the General Counsel's joint-employer admission requirement, but Wright Management is now being forced into a massive, complex trial involving dozens of unrelated corporate entities that will take years to resolve, the likes of which are unprecedented in any forum.

IV. Continued Consolidation Will Result In An Unmanageable Hearing Process Rife With Numerous Delays

The General Counsel's decision to consolidate should be guided by concerns for "effectuat[ing] the purposes of the Act or avoid[ing] unnecessary costs or delay." Board Rule § 102.33(a). Here, there are no common issues of fact that would achieve the efficiencies of consolidation. Severance of the cases against each distinct Franchisee to allow them to proceed separately will increase efficiency and avoid additional costs to the parties of participating in the litigation of wholly irrelevant issues. This type of consolidation, particularly where the cases do

not involve a common set of facts or parties, will be completely unmanageable. At every stage of the hearing process, the consolidated cases will be susceptible to delay.⁴

The numerous parties involved will include counsel for each Franchisee, counsel for McDonald's, counsel for the General Counsel, and counsel for each of the Charging Parties. As stated previously, each of these parties will need to be present and participate at each stage of the consolidated proceedings in order to properly track the progress of the case and protect their interests throughout the hearing. Trial preparation will involve the exchange of likely millions of documents between the parties. The inevitable disputes over discovery will, no doubt, result in numerous delays to the overall proceedings.

Witnesses will need to be prepped to endure direct examination but also multiple rounds of cross examination as each involved party will be entitled to question each witness. Further, given the numerous parties involved, any motion practice during the proceedings will also result in delays as the ALJ will be reviewing motions from each party involved, in making her rulings. Finally, the post-hearing brief submissions of each party will delay final resolution of the various cases. Given the involvement of counsel for each Franchisee, counsel for McDonald's, counsel for the General Counsel, and counsel for each of the Charging Parties, there is the potential for more than 20 post-hearing briefs at the end of the proceedings. Severance of the cases such that all charges against a single Franchisee are consolidated with each other but not consolidated with charges involving separate and distinct Franchisees will decrease each of these inefficiencies and minimize the potential for delay to all of the parties.

⁴ *CNN America, Inc.*, Case Nos. 05-CA-31828 and 05-CA-33125, primarily involved whether CNN and its former subcontractor were joint employers under the Act. While this case concerned only two corporate entities and two unfair labor practice charges, it took 82 days to try and involved "16,000 pages of transcript and over 1300 exhibits." *CNN America, Inc.*, Case Nos. 05-CA-31828 and 05-CA-33125, 2008 WL 6524258, at *1 (N.L.R.B. Div. of Judges Nov. 19, 2008). This case was pending before the Board for over five years before the Board finally issued a decision on September 15, 2014. See 361 NLRB No. 47. By comparison, given the size of this case as currently consolidated, it is likely to take much longer than *CNN America, Inc.* to conclude.

CONCLUSION

For the foregoing reasons, Wright Management respectfully requests the ALJ to order the severance of cases against each distinct Franchisee.

Dated: January 23, 2015

Respectfully submitted,

s/ Amanda A. Sonneborn

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CERTIFICATE OF SERVICE

I do hereby certify that I have caused a true and correct copy of the foregoing MOTION TO SEVER to be served upon the following, via the NLRB's e-filing system, email and U.S.

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